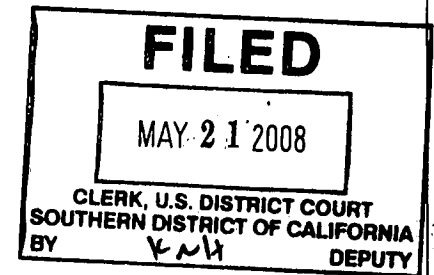


1 LYNN HUBBARD, III, SBN 69773  
2 SCOTTLINN J HUBBARD, IV, SBN 212970  
3 **DISABLED ADVOCACY GROUP, APLC**  
4 12 Williamsburg Lane  
5 Chico, CA 95926  
6 Telephone: (530) 895-3252  
7 Facsimile: (530) 894-8244



8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11  
12  
13 MATT STRONG,

14 Plaintiff,

15 vs.

16 UNS, INC. dba LONG JOHN  
17 SILVER'S; SAN DIEGO MART  
18 ASSOCIATES,

19 Defendants.

No. '08 CV 0901 BEN RBB

Plaintiff's Complaint

20  
21  
22  
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28  
*Strong v. UNS, Inc. dba Long John Silver's, et al.*  
Plaintiff's Complaint

I. SUMMARY

1. This is a civil rights action by plaintiff Matt Strong ("Strong") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Long John Silver's  
270 Fletcher Parkway  
El Cajon, CA 92020  
(hereafter "the Restaurant")

2. Strong seeks damages, injunctive and declaratory relief, attorney fees and costs, against UNS, Inc. dba Long John Silver's and San Diego Mart Associates (collectively "Long John Silver's") pursuant to the Americans with Disabilities Act of 1990, ( 42 U.S.C. §§ 12101 et seq.), and related California statutes.

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. Strong's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Southern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Long John Silver's owns, operates, and/or leases the Restaurant, and consists of a person (or persons), firm, or corporation.

8. Strong is a C-5 quadriplegic, is unable to walk or stand and requires the use of a wheelchair when traveling about in public. Consequently, Strong is "physically disabled," as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

## V. FACTS

9. The Restaurant is an establishment serving food and drink, open to the public, which is intended for nonresidential use and whose operation affects commerce.

10. Strong visited the Restaurant and encountered barriers (both physical and intangible) that interfered with—if not outright denied—his ability to use and enjoy the goods, services, privileges, and accommodations offered at the facility. To the extent known by Strong, the barriers at the Long John Silver's included, but are not limited to, the following:

- There is a built up curb ramp that encroaches into the access aisle, thereby causing the slope and cross slope of said aisle to exceed 2.0%;
- There is no van accessible parking space;
- The tow away signage posted is not correct;
- There is no International Symbol of Accessibility mounted at the entrance door;
- The order and service counter is too high and does not have a portion lowered for the use of a patron in a wheelchair;
- There is no seating designated as being accessible to the disabled;
- There is no disabled seating;
- The toilet tissue dispenser is mounted too high and above the grab bar;
- The leading edge of the toilet tissue dispenser is mounted more than 24 inches from the front of the water closet;
- The toilet tissue dispenser is an obstruction to the use of the side grab bar;
- The flush valve is not located on the wide side of the water closet;

- 1       • The side grab bar is too short;
- 2       • The paper towel dispenser is mounted at more than 40 inches from the
- 3       floor;
- 4       • The pipes underneath the lavatory are improperly and/or not completely
- 5       wrapped; and,
- 6       • The trash receptacle is an obstruction to the use of the lavatory.

7 These barriers prevented Strong from enjoying full and equal access.

8       11. Strong was also deterred from visiting the Restaurant because he  
9 knew that the Restaurant's goods, services, facilities, privileges, advantages, and  
10 accommodations were unavailable to physically disabled patrons (such as  
11 himself). He continues to be deterred from visiting the Restaurant because of the  
12 future threats of injury created by these barriers.

13       12. Strong also encountered barriers at the Restaurant, which violate  
14 state and federal law, but were unrelated to his disability. Nothing within this  
15 Complaint, however, should be construed as an allegation that Strong is seeking  
16 to remove barriers unrelated to his disability.

17       13. Long John Silver's knew that these elements and areas of the  
18 Restaurant were inaccessible, violate state and federal law, and interfere with (or  
19 deny) access to the physically disabled. Moreover, Long John Silver's has the  
20 financial resources to remove these barriers from the Restaurant (without much  
21 difficulty or expense), and make the Restaurant accessible to the physically  
22 disabled. To date, however, Long John Silver's refuses to either remove those  
23 barriers or seek an unreasonable hardship exemption to excuse non-compliance.

24       14. At all relevant times, Long John Silver's has possessed and enjoyed  
25 sufficient control and authority to modify the Restaurant to remove impediments  
26 to wheelchair access and to comply with the Americans with Disabilities Act  
27 Accessibility Guidelines and Title 24 regulations. Long John Silver's has not  
28 removed such impediments and has not modified the Restaurant to conform to

1 accessibility standards. Long John Silver's has intentionally maintained the  
2 Restaurant in its current condition and has intentionally refrained from altering  
3 the Restaurant so that it complies with the accessibility standards.

4 15. Strong further alleges that the (continued) presence of barriers at the  
5 Restaurant is so obvious as to establish Long John Silvers' discriminatory intent.<sup>1</sup>  
6 On information and belief, Strong avers that evidence of this discriminatory  
7 intent includes Long John Silvers' refusal to adhere to relevant building  
8 standards; disregard for the building plans and permits issued for the Restaurant;  
9 conscientious decision to the architectural layout (as it currently exists) at the  
10 Restaurant; decision not to remove barriers from the Restaurant; and allowance  
11 that the Restaurant continues to exist in its non-compliant state. Strong further  
12 alleges, on information and belief, that Long John Silver's is not in the midst of a  
13 remodel, and that the barriers present at the Restaurant are not isolated (or  
14 temporary) interruptions in access due to maintenance or repairs.<sup>2</sup>

## 15 VI. FIRST CLAIM

### 16 Americans with Disabilities Act of 1990

#### 17 Denial of "Full and Equal" Enjoyment and Use

18 16. Strong incorporates the allegations contained in paragraphs 1  
19 through 15 for this claim.

20 17. Title III of the ADA holds as a "general rule" that no individual  
21 shall be discriminated against on the basis of disability in the full and equal  
22 enjoyment (or use) of goods, services, facilities, privileges, and accommodations  
23 offered by any person who owns, operates, or leases a place of public  
24 accommodation. 42 U.S.C. § 12182(a).

25 18. Long John Silver's discriminated against Strong by denying "full  
26 and equal enjoyment" and use of the goods, services, facilities, privileges or  
27

28 <sup>1</sup> E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

<sup>2</sup> Id.; 28 C.F.R. § 36.211(b)

*Strong v. UNS, Inc. dba Long John Silver's, et al.*

Plaintiff's Complaint

1 accommodations of the Restaurant during each visit and each incident of  
2 deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 19. The ADA specifically prohibits failing to remove architectural  
5 barriers, which are structural in nature, in existing facilities where such removal  
6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
7 achievable” is defined as “easily accomplishable and able to be carried out  
8 without much difficulty or expense.” *Id.* § 12181(9).

9 20. When an entity can demonstrate that removal of a barrier is not  
10 readily achievable, a failure to make goods, services, facilities, or  
11 accommodations available through alternative methods is also specifically  
12 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

13 21. Here, Strong alleges that Long John Silver's can easily remove the  
14 architectural barriers at the Restaurant without much difficulty or expense, and  
15 that Long John Silver's violated the ADA by failing to remove those barriers,  
16 when it was readily achievable to do so.

17 22. In the alternative, if it was not “readily achievable” for Long John  
18 Silver's to remove the Restaurant's barriers, then Long John Silver's violated the  
19 ADA by failing to make the required services available through alternative  
20 methods, which are readily achievable.

21 Failure to Design and Construct an Accessible Facility

22 23. On information and belief, the Restaurant was designed or  
23 constructed (or both) after January 26, 1992—independently triggering access  
24 requirements under Title III of the ADA.

25 24. The ADA also prohibits designing and constructing facilities for  
26 first occupancy after January 26, 1993, that aren't readily accessible to, and  
27 usable by, individuals with disabilities when it was structurally practicable to do  
28 so. 42 U.S.C. § 12183(a)(1).

1           25. Here, Long John Silver's violated the ADA by designing or  
2 constructing (or both) the Restaurant in a manner that was not readily accessible  
3 to the physically disabled public—including Strong—when it was structurally  
4 practical to do so.<sup>3</sup>

5                           Failure to Make an Altered Facility Accessible

6           26. On information and belief, the Restaurant was modified after  
7 January 26, 1992, independently triggering access requirements under the ADA.

8           27. The ADA also requires that facilities altered in a manner that affects  
9 (or could affect) its usability must be made readily accessible to individuals with  
10 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering  
11 an area that contains a facility's primary function also requires adding making  
12 the paths of travel, bathrooms, telephones, and drinking fountains serving that  
13 area accessible to the maximum extent feasible. Id.

14           28. Here, Long John Silver's altered the Restaurant in a manner that  
15 violated the ADA and was not readily accessible to the physically disabled  
16 public—including Strong—to the maximum extent feasible.

17                           Failure to Modify Existing Policies and Procedures

18           29. The ADA also requires reasonable modifications in policies,  
19 practices, or procedures, when necessary to afford such goods, services,  
20 facilities, or accommodations to individuals with disabilities, unless the entity  
21 can demonstrate that making such modifications would fundamentally alter their  
22 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

23           30. Here, Long John Silver's violated the ADA by failing to make  
24 reasonable modifications in policies, practices, or procedures at the Restaurant,  
25 when these modifications were necessary to afford (and would not fundamentally  
26 alter the nature of) these goods, services, facilities, or accommodations.

27  
28 <sup>3</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.



7 VII. SECOND CLAIM

9           33. Strong incorporates the allegations contained in paragraphs 1  
10 through 30 for this claim.

35. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.

37. Here, Long John Silver's discriminated against the physically disabled public—including Strong—by denying them full and equal access to the Restaurant. Long John Silver's also violated Strong's rights under the ADA, and, therefore, infringed upon or violated (or both) Strong's rights under the Disabled Persons Act.

***Strong v. UNS, Inc. dba Long John Silver's, et al.***  
**Plaintiff's Complaint**



1 thousand dollars (\$1,000), declaratory relief, and any other remedy available  
2 under California Civil Code § 54.3.

3 39. He also seeks to enjoin Long John Silver's from violating the  
4 Disabled Persons Act (and ADA) under California Civil Code § 55, and to  
5 recover reasonable attorneys' fees and incurred under California Civil Code §§  
6 54.3 and 55.

### 7 VIII. THIRD CLAIM

#### 8 Unruh Civil Rights Act

9 40. Strong incorporates the allegations contained in paragraphs 1  
10 through 30 for this claim.

11 41. California Civil Code § 51 states, in part, that: All persons within  
12 the jurisdiction of this state are entitled to the full and equal accommodations,  
13 advantages, facilities, privileges, or services in all business establishments of  
14 every kind whatsoever.

15 42. California Civil Code § 51.5 also states, in part, that: No business  
16 establishment of any kind whatsoever shall discriminate against any person in  
17 this state because of the disability of the person.

18 43. California Civil Code § 51(f) specifically incorporates (by  
19 reference) an individual's rights under the ADA into the Unruh Act.

20 44. Long John Silvers' aforementioned acts and omissions denied the  
21 physically disabled public—including Strong—full and equal accommodations,  
22 advantages, facilities, privileges and services in a business establishment  
23 (because of their physical disability).

24 45. These acts and omissions (including the ones that violate the ADA)  
25 denied, aided or incited a denial, or discriminated against Strong by violating the  
26 Unruh Act.



2. Declaratory relief that Long John Silver's violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>4</sup>
5. Interest at the legal rate from the date of the filing of this action.

DATED: May 20, 2008

DISABLED ADVOCACY GROUP, APLC

LYNN HUBBARD, III  
Attorney for Plaintiff

<sup>4</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.  
*Strong v. UNS, Inc. dba Long John Silver's, et al.*  
Plaintiff's Complaint

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

MATT STRONG

(b) County of Residence of First Listed Plaintiff SAN DIEGO  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

LYNN HUBBARD, III · DISABLED ADVOCACY GROUP, APLC  
12 Williamsburg Lane Chico, CA 95926 (530) 895-3252

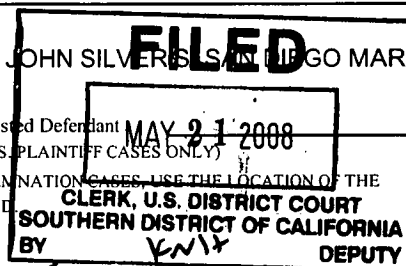
## DEFENDANTS

UNS, INC. dba LONG JOHN SILVER'S SAN DIEGO MART ASSOCIATES

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED

Attorneys (If Known)



08 CV 0901 BEN RBB

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>CONTRACT</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>TORTS</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL INJURY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>REAL PROPERTY</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>LABOR</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. Section 12101, et seq.

Brief description of cause:

Ongoing violations of the ADA Construction Standards

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/20/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

151174

AMOUNT

350.-

APPLYING IFP

JUDGE

MAG. JUDGE

5/21/08

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 151174 - SR**

**May 21, 2008  
15:38:01**

**Civ Fil Non-Pris**

USAO #: 08CV0901 CIV. FIL.

Judge.: ROGER T BENITEZ

Amount.: \$350.00 CC

**Total-> \$350.00**

**FROM: STRONG V. LONG JOHN SILVERS  
CIVIL FILING**